~~1302~~ No. 3754 1303

United States

Circuit Court of Appeals

For the Ninth Circuit.

AUGUST BECHTOLD,

~~Appellant,~~ Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

~~Appellee.~~ Defendant in Error.

Transcript of Record.

Upon ~~Appeal from~~ Writ of Error to the United States District Court for the District of Montana.

FILED
SEP 14 1921
F. D. MONCKTON,
CLERK

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

FRANK A. LENZ, Esq., of Butte, Montana,
Attorney for Petitioner and Appellant.

JOHN L. SLATTERY, Esq., United States District Attorney for the District of Montana, of Helena, Montana,
Attorney for Respondents and Appellees.

In the District Court of the United States, in and for the District of Montana.

No. 329.

In the Matter of the Application of AUGUST BECHTOLD for a Writ of Habeas Corpus.

BE IT REMEMBERED, that on October 28th, 1920, an indictment was filed in the above-entitled court against the above-named petitioner, which said indictment is in the words and figures as follows, to wit: [1*]

Indictment.

United States of America,
District of Montana,—ss.

In the District Court of the United States, within and for the District of Montana, of the September term of said District Court held at Butte, Silver Bow County, in said District of Montana, in the year of our Lord one thousand nine hundred and twenty.

*Page-number appearing at foot of page of original certified Transcript of Record.

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the District of Montana, and true presentment make of all crimes and misdemeanors committed against the laws of the United States, within the state and district of Montana, upon their oaths and affirmations do find, charge and present:

That one August Bechtold, whose true name is to the grand jurors aforesaid unknown, late of the state and district of Montana, heretofore, to wit, on the 12th day of July, 1920, in the county of Silverbow, in the state and district of Montana, unlawfully and feloniously did make and ferment a certain mash fit for the production of spirits, in quantity about one hundred and twenty gallons, a more particular description of which is to the grand jurors aforesaid unknown, in a certain building other than a distillery, duly authorized according to law, and on premises other than a distillery duly authorized according to law, which premises were then and there situated upon Sections Ten (10) and Three (3), in Township Three (3) North of Range Eight (8) West of the Montana Principal Meridian, upon which premises said building was then and there situated; neither said building nor said premises being then and there a distillery duly authorized according to law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths

and affirmations aforesaid, do further find, charge and present:

That on the 12th day of July, 1920, in the state and district of Montana, the said August Bechtold, whose true name is to the grand jurors aforesaid unknown, late of the state and district of Montana, on premises situated on Sections Ten (10) and Three (3), in Township Three (3), North of Range Eight (8) West of the Montana Principal Meridian, in the county of Silver Bow, in the state and district of Montana, and in the Internal Revenue Collection District of Montana, [2] having then and there in his possession and under his control a certain still set up, did fail and neglect to register the same with the Collector of Internal Revenue of the said United States for the said Collection District, by subscribing and filing with him duplicate statements in writing setting forth particular place where the said still was so put up, the kind and cubic contents of said still, the owner or owners thereof, his or their place of residence, and the purpose for which the said still had been or was intended to be used, and so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the said August Bechtold, whose true name is to the grand jurors aforesaid unknown, on the day and year aforesaid, on the premises aforesaid, in the state and district aforesaid, unlawfully did have in his possession and custody and under his control a still set up, which was not then and there registered, as required by law; contrary to the form of the statute in such case

made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge and present:

That the said August Bechtold, whose true name is to the grand jurors aforesaid unknown, late of the state and district of Montana, on the 12th day of July, 1920, in the county of Silver Bow, in the state and district of Montana, on premises situated on Sections Ten (10) and Three (3), in Township Three (3) North of Range Eight (8) West of the Montana Principal Meridian, in the said state and district of Montana, did unlawfully and feloniously carry on the business of a distiller by producing distilled spirits and making a mash fit for distillation and for the production of spirits, without having given bond, as required by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

W. W. PATTERSON,
United States Attorney for the District of Montana.

[3]

[Endorsed as follows, to wit]: No. 735. United States District Court, District of Montana. United States of America, vs. August Bechtold. Indictment: A true Bill, W. D. Fenner, Foreman of Grand Jury. W. W. Patterson, United States Attorney, District of Montana.

Witnesses:

H. M. DENGLER.
JOE MANWARING.
VICTOR SCHWARTZ.
H. B. ENYART.
F. A. MANGOLD.

Bond $500.00.

Presented by the grand jury in open court, by their foreman, in their presence, and filed this 28th day of Oct., A. D. 1920.

C. R. GARLOW,
Clerk.
By L. R. Polglase,
Deputy.

That thereafter, on November 16th, 1920, judgment was duly rendered and entered herein, in the words and figures as follows, to wit: [4]

In the District Court of the United States, in and for the District of Montana.

No. 735.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

AUGUST BECHTOLD,
Defendant.

Judgment.

The United States Attorney with the defendant and his counsel present in court. The defendant

was thereupon duly informed by the court of the nature of the charge against him as appears in the indictment herein, and of his indictment, arraignment, and plea of not guilty, and of his trial and the verdict of guilty as charged.

And the defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the Court, thereupon the Court rendered its judgment as follows, to wit:

That whereas the said defendant having been duly convicted in this court of the offense of unlawfully making and fermenting a mash fit for the production of spirits on premises other than a distillery duly authorized according to law, unlawfully having in his possession and under his control a certain still set up which was not registered as required by law, and unlawfully carrying on the business of a distiller without having given bond as required by law, committed on the 12th day of July, 1920, in the county of Silver Bow, State and District of Montana, as charged in the indictment herein;

It is therefore considered, ordered and adjudged that for said offense you, the said August Bechtold, be confined and imprisoned in the county jail at Butte, Montana, for the term of nine months, and that you pay a fine of Five Hundred Dollars, and costs taxed at $33.50, and that you be confined in said county jail until said fine is paid [5] or you are otherwise discharged according to law.

Judgment rendered and entered Nov. 16, 1920.

[Seal] C. R. GARLOW,
Clerk.
By L. R. Polglase,
Deputy.

That thereafter, on November 16th, 1920, a commitment was duly issued herein, in the words and figures as follows, to wit: [6]

In the District Court of the United States, in and for the District of Montana.

No. 735.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

AUGUST BECHTOLD,
Defendant.

United States of America,
District of Montana,—ss.

Commitment.

The President of the United States of America, to the Marshal of the United States for the District of Montana, GREETING:

WHEREAS, at a term of the District Court of the United States for the District of Montana, held at the courtroom of said Court in the city of Butte, county of Silver Bow, in said District, to wit, on the 16th day of November, A. D. 1920, the above-named defendant August Bechtold was convicted of the of-

fense of unlawfully making a mash fit for the production of spirits and having a still in his possession and carrying on the business of a distiller, committed on the 12th day of July, A. D. 1920, in Silver Bow County, in the State and District of Montana, and within the jurisdiction of this Court, contrary to the form of the statutes of the United States in such cases made and provided, and against the peace and dignity of the United States of America.

And whereas, on the 16th day of November, A. D. 1920, the said defendant was, for said crime of which he stood convicted as aforesaid, by the judgment of said court ordered to be imprisoned for the term of nine months, and to pay a fine of $500.00 and the costs amounting to $33.50.

And whereas, it was further ordered by the Court that said sentence of imprisonment be executed upon the said defendant until the other or further order of the Court, by imprisonment in the county jail of the county of Silver Bow, State of Montana, to commence Nov. 22, 1920.

NOW, THIS IS TO COMMAND YOU, the said Marshal, to take and keep and safely deliver the said defendant into the custody of the Sheriff in charge of said county jail, Nov. 22, 1920.

AND THIS IS TO COMMAND YOU, the said Sheriff in charge of said county jail, to receive from the United States Marshal of said District of Montana the said defendant August Bechtold on Nov. 22, 1920, convicted and sentenced as aforesaid, and him, the said defendant, keep and imprison in said county jail for the term of nine months, and until

said fine of $500.00 is paid or he is otherwise discharged according to law.

HEREIN FAIL NOT.

Witness, The Hon. GEO. M. BOURQUIN, Judge of the District Court of the United States for the District of Montana, and the seal thereof, this 16th day of November, A. D. 1920.

[Seal] C. R. GARLOW,
Clerk of said District Court.
By ————————,
Deputy Clerk.

The within warrant of commitment was received by me on the 17th day of November, 1920, and is returned executed this 1st day of April, 1921.

JOSEPH L. ASBRIDGE,
U. S. Marshal.
By E. L. Sanborn,
Deputy.

[Endorsed]: Original. No. 735. In the District Court of the United States, District of Montana. The United States vs. Aug. Bechtold. Commitment to County Jail. Stay to Nov. 22, 1920. Further stay until Dec. 4, 1920. Further stay until Apr. 1, 1921. Filed April 6, 1921. C. R. Garlow, Clerk. By L. R. Polglase, Deputy Clerk.

That thereafter, on June 6th, 1921, application for a writ of habeas corpus was filed herein, in the words and figures as follows, to wit: [7]

In the District Court of the United States for the District of Montana.

In the Matter of Application of AUGUST BECHTOLD for a Writ of Habeas Corpus.

Complaint.

To the Above-entitled Court and the Honorable GEORGE M. BOURQUIN, Judge Thereof:

August Bechtold of Silver Bow County, State and District of Montana, respectfully shows:

1. That on the 28 day of October, 1920, at the City of Butte, in said District of Montana, an indictment, now on file in the office of the Clerk of this Court, at Butte, Montana, numbered 735 entitled "United States of America, plaintiff, vs. August Bechtold, defendant.

2. That thereafter, to wit: on the 4 day of November, 1920, he was arraigned in the above entitled Court on the charges contained in said indictment and entered his plea of NOT GUILTY to each and all of the charges contained in said indictment as more properly appears from the entry made in the minutes of this court in said Criminal cause No. 735 which, together with the indictment above set forth are made a part of this complaint.

3. That on November 15, 1920, at Butte, Montana, said Criminal cause No. 735, came regularly on for trial, the said defendant appearing with his attorney, Frank A. Lenz, whose name has been regularly entered in said case as defendant's attorney

on or about the 10th day of November, 1920, and that the jury sitting in said case, after hearing the testimony of the plaintiff and of the defendant and the instructions of the Honorable Judge herein and after having retired to consider of their verdict on the charges contained in said indictment returned into open court with their verdict which was by the Court received and ordered read and filed, which was in substance: Guilty as charged in the said indictment, leaving the punishment of the [8] defendant to the Honorable Trial Judge all of which more fully appears in the files and minute entries of said date in said Criminal Cause No. 735 which are herewith made part hereof.

That thereafter, to wit: on the 16th day of November, 1920, at Butte, Montana, in open Court, the defendant, waiving time for sentence and judgment, was by the Honorable Judge of this Court sentenced to pay a fine of five hundred Dollars and be imprisoned for the term of nine months in the County Jail of Silver Bow County, Montana, but that commitment was held in abeyance by order of the Court until the 1 day of January, 1921, and thereafter in further abeyance until the 1 day of April, 1921.

4. That on the 1 day of April, 1921, at Butte, Montana, Joseph L. Asbridge, then and now the duly appointed, qualified and acting United States Marshal for the District of Montana, pursuant to the direction of said commitment delivered defendant into the custody of Larry Duggan, then and

there the duly elected, qualified and acting Sheriff of Silver Bow County, Montana, in charge of the county jail of said county, and that said defendant was by said Sheriff received and imprisoned in compliance with the orders of this Court contained in said commitment.

5. That Larry Duggan of the city of Butte, Montana, is now the duly elected, qualified and acting Sheriff of Silver Bow County, Montana, and as such Sheriff in charge of the county jail of Silver Bow County, Montana and that defendant is now, and ever since the first day of April, 1920 has been a prisoner in said county jail under said sentence and commitment from this Court.

6. That defendant is informed by Frank A. Lenz, his attorney, and verily believes and therefore states the fact to be, his imprisonment under said judgment, sentence and commitment is improper and illegal for the reason that the Sections of the Revised Statutes of the United States upon which said indictment is based were repealed and rendered of no further force or effect by the Eighteenth Amendment to the Constitution of the United States of America and the Act of October 28, 1919, Ch. 28, 41 Stat. I, 305, known as the "National Prohibition Act" prior to the time of the commission of the acts charged in said indictment. [9]

WHEREFORE, petitioner prays that he be awarded a writ of Habeas Corpus, directed to Joseph L. Asbridge, as United States Marshal for the District of Montana, and Larry Duggan, as Sheriff of Silver Bow County, Montana, requiring

that they, and each of them, shall, at a time and place to be designated in said writ, make and file their return thereto and shall at the same time bring the body of said August Bechtold before the Judge who granted the said writ for the purpose of an inquiry into the cause of restraint of his liberty.

That upon the return and hearing of said writ he be ordered to be forthwith released and discharged from custody and that he have such other and further relief as may be fit and proper in the premises.

AUGUST BECHTOLD,
Complainant.
FRANK A. LENZ,
Attorney for Complainant.

State of Montana,
County of Silver Bow,—ss.

August Bechtold, being first duly sworn, on his oath disposes and says: That he is the complainant above subscribed; that he has read the foregoing complaint and knows the contents thereof and that the matters and things therein stated are true to his best knowledge, information and belief.

AUGUST BECHTOLD.

Subscribed and sworn to before me this 6 day of June, 1921.

[Seal] FRANK A. LENZ,
Notary Public for the State of Montana, Residing at Butte.

My commission expires March 1, 1922.

[Endorsed]: Title of Court and Cause. Complaint. Filed June 6th, 1921. C. R. Garlow, Clerk.

That thereafter, on June 25, 1921, Court's decision denying application for a writ of habeas corpus was filed herein in the words and figures as follows, to wit: [10]

In the District Court of the United States in and for the District of Montana.

In re LAWRENCE, et al.
Five Applications for Habeas Corpus.

Court's Decision of June 25, 1921.

The indictments upon which these applicants for habeas corpus were convicted and are imprisoned charge that they violated Section 3258, R. S., in that they had in their possession stills set up and failed to register the same, Section 3281, R. S., in that they carried on the business of distillers without having given bonds, and Section 3282, R. S. in that they made mashes fit for the production of spirits on premises other than distilleries duly authorized, all of date since the Volstead Act.

The applications are based upon the contention that said sections of the revenue laws are repealed by said Act, and in consequence the sentences are void and imprisonment, illegal; and in support thereof the decision by the Supreme Court in the Yuginovich Case, June 1st, 1921, is cited. This decision has been anxiously awaited by courts hopelessly divided in respect to the extent that the

Eighteenth Amendment and Act repeal the old revenue laws, and yet it little clarifies the problem. It determines that certain sections of the old revenue laws, including two here involved, are partially repealed or superseded, but it is in view of circumstances that may or may not be present here and in any other case, dependent apparently upon the particular court's construction of the indictment before it and whether that construction is based on conjectures or surmise or on the language in the indictment used. The indictment in the Yuginovich case is like those here involved, in all material and essential averments. There, as here, the charge relates to and is limited to acts that are yet lawful, viz., distillation of intoxicating liquors, imputing criminality thereto only because done in unlawful circumstances, viz., without compliance with the old revenue laws.

The gist of the offenses charged are not the accused's acts of commission, but are their acts of omission. And why it is conjectured that the Yuginavich indictment intends to charge only acts of commission that are unlawful in any circumstances, viz., distillation of intoxicating liquor for beverage purposes, is—also conjectured. [11]

Neither that indictment nor any of these at bar, contains a word or fair inference that the object of the offenses otherwise fully charged is to devote the liquor to beverage purposes. If any of them did, either it or much other matter therein would be superfluous matter to be ignored, and any such inference would violate the principles of criminal

pleading. It hardly needs to be pointed out that in respect to charges of making liquor for beverage purposes, all these indictments are fatally defective by reason of failure to expressly aver the essential element that the liquor was made for "beverage purposes." Otherwise, the Yuginovich indictment would have been sustained as a sufficient charge of violation of the Volstead Act, even though brought in view of the old revenue laws.

See Williams vs. U. S., 168 U. S. 389.

For all that appears, Yuginovich and these applicants may have been proceeding in strict compliance with the Volstead Act.

If indictments are subject to the method of construction that the Supreme Court finds the trial court adopted in the Yuginovich case, amongst other things it tends to the novel principle that an accused fully charged of one offense, may escape on plea of his own wrong, viz., that he did what was charged but with intent to commit and did commit another offense. For if it is a defense when averred or inferred in the indictment, it ought equally to be a defense to be proven by accused when not in the indictment. The rule is otherwise. Acts as here capable of being done lawfully may be done unlawfully for various reasons and objects and in violation of several statutes. And it is no defense that the act charged to be unlawful for one reason and object and against one statute, is also unlawful for other reasons and objects and against other statutes.

See Gavierres vs. U. S., 220 U. S. 342.

It is true revenue and other regulations are not to sanction unlawful acts and business. They are applied to lawful acts and business, but always such acts and business are capable of also being done unlawfully or to unlawful ends. When so done, what principle avoids the tax, regulations and penalties? Clearly the owner of an auto cannot thus escape upon the plea his car was intended for and devoted to only unlawful transportation of intoxicants. Yet he could not register and secure license for this unlawful object and use. So of a pawnbroker who would attempt to plead he loaned only upon stolen goods. [12]

The Yuginovich case is not controlling here. The Supreme Court emphasizes that it is bound to construe the indictment as did the trial court, and so is restricted to narrow limits. It confines its decision to a charge relating to manufacture of intoxicants for beverage purposes, and in respect thereto finds that the intent of the Volstead Act is to partially repeal or supersede some of the old revenue laws. In a like case it will control. These at bar are not like cases. These indictments are not construed in violation of language and principle to charge offenses consisting of acts of commission unlawful in any circumstances, viz., distillation of intoxicating liquors for beverage purposes, but are construed in obedience to both, to charge offenses consisting of acts of commission in themselves lawful but done under unlawful circumstances of omission, viz., distillation of intoxicating liquors without compliance with the old revenue laws.

This Court held in Sohm's Case, 265 Federal 910, that in cases like these at bar the Volstead Act did not repeal the old revenue laws so far as herein involved. The reassons for that view and which the court adheres, appear in Sohm's Case and in others of like tenor, and need not be repeated. It is believed the Supreme Court's decision in Yuginovich's Case does not militate against the rule of Sohm's Case, even if it does not tend to support it. It follows that applicants' sentences and imprisonment are legal, and habeas corpus is denied. At hearing applicants were *enlarged* upon their own recognizance, and may so continue for thirty days to give opportunity to seek review on appeal, and until any appeal taken is determined.

June 25, 1921.

BOURQUIN,
Judge.

[Endorsed]: No. 327. In re Charles Lawrence for Writ of Habeas Corpus and 4 Like Cases. Decision Denying Writs. Filed June 25, 1921. C. R. Garlow, Clerk.

That thereafter on July 22, 1921, petition for a writ of error was filed herein in the words and figures as follows, to wit: [13]

In the District Court of the United States in and for the District of Montana.

No. 329.

In the Matter of Application of AUGUST BECHTOLD for a Writ of Habeas Corpus.

Petition for a Writ of Error.

Comes now the defendant August Bechtold and petitions this Court for a writ of error herein, and respectfully represents:

That on or about the 16th day of November, 1920, the above-entitled court entered a judgment against the defendant, wherein the defendant was sentenced to be confined and imprisoned in the County Jail at Butte, Montana, for the term of nine months, and to pay a fine of $500.00 and costs taxed at $33.50, for the alleged offense of violating Sections 3282, 3258 and 3281 of the United States Revenue Laws (Rev. St. Anno. IV, pp. 44, 24, and 41) on the 12th day of July, 1920. That said judgment and sentence was suspended until the first day of January, 1921, and again suspended until the first day of April, 1921.

That on the said first day of April, 1921, under a commitment out of this court he was thereupon imprisoned in the County Jail at Butte, Montana, to serve his said sentence of nine months' imprisonment, but that on or about the 6th day of June,

1921, he filed an application for a writ of habeas corpus, which said application was on the 15th day of June, 1921, submitted to the Court without argument and by the Court taken under advisement; that, pending the decision of this Court on said application for a writ of habeas corpus, he was, by order of the Court, allowed to go at large upon his personal recognition, and that on or about the 25th day of June, 1921, this Court rendered and entered its decision upon his and four other applications for a writ of habeas corpus, denying his and all said applications, which said decision is entitled: "In Re Lawrence et al.—Five Applications for Habeas Corpus" and includes a permission for an appeal in these cases for a review by the Circuit Court of Appeals for the Ninth Circuit.

That defendant desires said Circuit Court of Appeals for the [14] Ninth Circuit to review his said cause and application for a writ of habeas corpus on the grounds therein named;

Wherefore, this defendant prays that a writ of error issue in this behalf out of the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of the errors complained of in said application for a writ of habeas corpus, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California.

FRANK A. LENZ,
Attorney for Defendant.

[Endorsed]: Title of Court and Cause. Petition for a Writ of Error. Filed July 22, 1921. C. R. Garlow, Clerk.

That thereafter, on July 22d, 1921, order allowing writ of error was filed herein in the words and figures as follows, to wit: [15]

In the District Court of the United States in and for the District of Montana.

No. 329.

In the Matter of the Application of AUGUST BECHTOLD for a Writ of Habeas Corpus.

Order Allowing Writ of Error.

On this 22d day of July, 1921, comes the defendant, August Bechtold, by his attorney, and files herein and presents to the Court his petition, praying for the allowance of a writ of error intended to be urged by him, and praying, also, that a transcript of the record, proceedings and papers, upon which the judgment herein was rendered and order made, duly authenticated, may be presented to the United States Circuit Court of Appeals, Ninth Circuit, and that such other and further proceedings may be had as are proper in the premises.

In consideration whereof the Court does allow the writ of error upon the defendant giving bond according to law in the sum of $750.00 as an undertaking on appeal.

BOURQUIN,
District Judge.

[Endorsed]: Title of Court and Cause. Order Allowing Writ of Error. Filed July 22, 1921. C. R. Garlow, Clerk.

That thereafter, on August 2d, 1921, undertaking on appeal was filed herein in the words and figures as follows, to wit: [16]

In the District Court of the United States in and for the District of Montana.

No. 329.

In the Matter of the Application of AUGUST BECHTOLD for a Writ of Habeas Corpus.

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, August Bechtold, as principal, and John R. Moyle and J. W. Mueller as his sureties, are held and firmly bound unto the United States of America in the full and just sum of $750.00 to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 23d day of July, 1921.

WHEREAS, on the 16th day of November, 1920, at a District Court of the United States, in and for the District of Montana, in a suit depending in said court between the United States of America as plaintiff and August Bechtold as defendant, a judg-

ment was entered against the defendant sentencing him to be confined and imprisoned in the County Jail at Butte, Montana, for the term of nine months, and that he pay a fine of $500.00 and costs taxed at $33.50; and

WHEREAS, the defendant, August Bechtold, is desirous of prosecuting an appeal from the judgment and sentence and an order of said Court, denying defendant's application for a writ of habeas corpus, to the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California, and has obtained a writ of error and filed a copy thereof in the clerk's office in said District Court of the United States, to reverse the judgment of the aforesaid suit, and said order denying said writ of habeas corpus, directed to the United States of America and to the Attorney General of the United States, citing said parties to be and appear at a session of the United States Circuit Court of Appeals, Ninth Circuit, to be heard at the city of San Francisco, within thirty days from the 2d day of August, 1921, [17]

Now, the condition of the foregoing obligation is such that if the said defendant, August Bechtold, shall prosecute said writ of error to effect and answer all demands and costs if he fail to make said appeal good, then the above obligation to be void; else to remain in full force and virtue.

AUGUST BECHTOLD.
J. W. MUELLER.
JOHN R. MOYLE.

John R. Moyle and J. W. Mueller, the sureties above subscribed, being duly sworn, say upon oath, each for himself, that he is a resident and freeholder within the State of Montana and is worth the sum specified in the foregoing undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JOHN R. MOYLE.
J. W. MUELLER.

Subscribed and sworn to before me this 23d day of July, 1921.

[Notarial Seal] FRANK A. LENZ,
Notary Public in and for the State of Montana,
Residing at Butte.

My commission expires March 1, 1922.

[Endorsed]: Title of Court and Cause. Bond, Approved, Bourquin, J. Filed Aug. 2, 1921. C. R. Garlow, Clerk.

That thereafter on August 2d, 1921, a writ of error was duly issued herein, which said writ of error is hereto annexed and is in the words and figures as follows, to wit: [18]

In the District Court of the United States for the District of Montana.

No. 329.

In the Matter of the Application of AUGUST BECHTOLD for a Writ of Habeas Corpus.

Writ of Error.

The United States of America,—ss.

The President of the United States of America to the Judge of the District Court of the United States, for the District of Montana, GREETING:

Because of the records of an indictment by the Grand Jury of the above-entitled court, empanelled at Butte, Montana, for the September term of the year 1920, charging the defendant, August Bechtold with the violations of Sections 3282, 3258, and 3281 of the revised Statutes of the United States (4 Fed. St. Anno. 44, 24, and 41), on the 12th day of July, 1920, and because of judgment and sentence herein, after conviction, entered November 16, 1920, ordering the defendant to be confined in the county jail at Butte, Montana, for the term of nine months and to pay a fine of $500.00, and because of an order of this Court denying the defendant's application for a writ of habeas corpus, made and entered on the 25th day of June, 1921, a manifest error hath happened, to the great damage of the said August Bechtold, as appears from the papers herein; we being willing that the error, if any has been committed, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you may have the same at the city of San

Francisco, State of California, thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid be inspected and the said Circuit Court of Appeals may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done. [19]

Witness the Hon. WILLIAM H. TAFT, Chief Justice, Chief Justice of the United States, the 2d day of August, in the year of our Lord one thousand nine hundred and twenty-one, and of the Independence of the United States the one hundred and forty-sixth.

[Seal] C. R. GARLOW,
Clerk of the District Court of the United States, for the District of Montana.

The above writ of error is hereby allowed by

_____,
District Judge.

Due service of above writ admitted and copy received at Helena, Montana, Aug. 2d, 1921.

W. H. WEIGE,
Asst. U. S. Attorney for the District of Montana.

Answer of Court to Writ of Error.

The answer of the Honorable, the District Judge of the United States for the District of Montana, to the foregoing writ:

The record and proceedings whereof mention is within made, with all things touching the same, I certify, under the seal of the said District Court of

the United States, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned, at the day and place contained, in a certain schedule to this writ annexed, as within I am commanded.

By the Court.

[Seal] C. R. GARLOW,
Clerk.
By L. Polglase,
Deputy Clerk. [20]

[Endorsed]: No. 329. In the District Court of the United States for the District of Montana. In the Matter of Application of August Bechtold for a Writ of Habeas Corpus. Writ of Error. Filed Aug. 2, 1921. C. R. Garlow, Clerk. [21]

That thereafter, on August 2d, 1921, a citation was duly issued herein, which citation is hereto annexed and is in the words and figures as follows, to wit: [22]

In the District Court of the United States for the District of Montana.

No. 329.

In the Matter of Application of AUGUST BECHTOLD for a Writ of Habeas Corpus.

Citation on Writ of Error.

The United States of America,—ss.

To HARRY M. DAUGHERTY, Attorney General of the United States, and to JOHN L. SLAT-

TERY, United States District Attorney for the District of Montana, and to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office in the District Court of the United States, for the District of Montana, wherein the United States of America is plaintiff and August Bechtold is defendant, to show cause, if any there be, why the judgment and sentence of the Court rendered against the defendant on the 16th day of November, 1920, and the order of said Court denying defendant's application for a writ of habeas corpus, made and entered on the 25th day of June, 1921, as in said writ of error mentioned, should not be corrected and speedy justice be done to the said defendant August Bechtold in that behalf.

Given under my hand in the city of Helena, in the District of Montana, above named, this 2d day of Aug., 1921.

BOURQUIN,

Judge of the District Court of the United States for the District of Montana.

Due service of above citation admitted and copy received at Helena, Montana, Aug. 2, 1921.

W. H. WEIGE,

Asst. U. S. Atty., District of Montana. [23]

[Endorsed]: No. 329. In the District Court of the United States for the District of Montana. In the Matter of Application of August Bechtold for a

Writ of Habeas Corpus. Citation. Filed Aug. 2, 1921. C. R. Garlow, Clerk. [24]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
District of Montana,—ss.

I, C. R. Garlow, Clerk of the United States District Court for the District of Montana, do hereby certify and return to the Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume, consisting of 25 pages, numbered consecutively from 1 to 25, inclusive, is a full, true and correct transcript of all things mentioned in the praecipe for transcript heretofore filed herein, as appears from the original files and records of said court in my custody as such clerk; and I further certify and return that I have annexed to said transcript and included within said paging the original writ of error and citation issued in said cause.

I further certify that the costs of the transcript of record amount to the sum of Eight and 75/100 Dollars ($8.75), and have been paid by the plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Butte, Montana, this 16th day of August, A. D. 1921.

[Seal] C. R. GARLOW,
Clerk.
By L. Polglase,
Deputy Clerk. [25]

[Endorsed]: No. 3754. United States Circuit Court of Appeals for the Ninth Circuit. August Bechtold, Appellant, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Montana.

Filed August 18, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.